IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.89 OF 2007

Business Space Designs, .. Appellant.
Vs
The Manugraph Industries Ltd & ors .. Respondents.

Mr P.R.Arjunwadkar, for the appellant.

CORAM : **D.B.BHOSALE,J.**
DATE : 27/02/2007
PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the concurrent judgments of the courts below, by which the appellant-plaintiff's suit for recovery of the agreed charges of design, interest, notice charges etc., has been dismissed.

3. Mr Arjunwadkar, learned counsel for the appellant, raised three contentions. Firstly, there was a clear oral agreement between the parties by which the plaintiff was obliged to prepare structural design of Jib Crane and merely because a formal document was not executed, the oral agreement does not become ineffective. In support of this contention, he placed reliance upon the judgment of the Apex Court in Kollipara Sriramula (dead) by his L.Rs.Vs T.Aswatha

Narayan (dead) by his L.Rs and ors, AIR 1968 SC 1028. Secondly, he submitted that the written statement filed by the defendants was not signed by an authorised person and, therefore, it ought not to have been taken into consideration for any purpose whatsoever by the courts below and, thirdly, he submitted that since the defendants failed to enter into witness box, the courts below ought to have drawn adverse inference.

4. Insofar as the first submission is concerned, Mr Arjunwadkar invited my attention to the correspondence placed on record at Exhibits-20,21 and 22 to contend that from perusal of the correspondence it is clear that there was a contract and under the contract the defendants were obliged to pay an amount of Rs.25,630/-. I perused the correspondence and more particularly the letter dated 13.5.1999 at Exhibit-52. This letter of the plaintiff to the defendants clearly demonstrates that the terms of the contract were not finalised. That apart, in my opinion, for the reasons stated in paragraphs 7 and 8 of the judgment, the courts below have rightly held that there was no concluding contract between the parties and no oral obligations were created between them and the defendants were not liable to pay the consulting charges or fees for preparation of the design. In this view of the matter, the judgment relied

upon by Mr Arjunwadkar, is of no avail to the plaintiff. Insofar as the second submission is concerned that the written statement was not signed by an authorised officer, also deserves to be rejected in view of the fact that the plaintiff could not establish his prima-facie case, as has rightly been observed by the courts below. Similarly, merely because the defendants did not enter into witness box does not mean that the case of the plaintiff stands proved. In the present case, the plaintiff has failed to establish that there was a concluding contract between himself and the defendants and, therefore, there was no question of drawing an adverse inference against the defendants. In the circumstances, the second appeal fails and dismissed as such.

(D.B.BHOSALE,J.)